

THE CODE

OF THE

STATE OF GEORGIA.

PREPARED BY

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SECOND EDITION

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28

PART IV.—TITLE I.—DIVISION IX

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Offenses against the public peace and tranquility.

NINTH DIVISION.

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

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*Mob violence; i.e.
Excelling 193.128*

§4513. (4440.) (4399.) *Unlawful assemblies.* If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being commanded to do so by a Judge, Justice, Sheriff, constable, coroner, or other peace officer, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in section 4310 of this Code.

§4514. (4441.) (4400.) *Riot.* If any two or more persons, either with or without a common cause of quarrel, do an unlawful act of violence, or any other act in a violent and tumultuous manner, such persons so offending shall be guilty of a riot, and, on conviction, shall be punished [as prescribed in section 4310 of this Code.] (a.)

Demand for trial by one of those engaged in a riot, the others continuing their case: 17 Ga., 618. Construction of this law: 20 Ga., 839. No new trial where the charge of the Court was correct, and there was some evidence to support the verdict: 28 Ga., 192. There was no riot where two men fall to fighting each other: 22 Ga., 488. It cannot be committed unless as many as two act in the commission of a common intent: 30 Ga., 27. Where severance on trial of persons charged with a riot is within the Court's discretion: 34 Ga., 10. Sufficient evidence of identity and misnomer in name of one appearing on trial of the other separately, did not vitiate: 38 Ga., 184. Motion in arrest of judgment refused, the facts set up by defendant not appearing from the Court's records: 42 Ga., 203-205. May be tried separately, and the acquittal of one did not operate as an acquittal of the other: 51 Ga., 375. Severance and conviction of all, joint motion for a new trial unobjected to; costs: 52 Ga., 664-7. A weak case, but the verdict not disturbed, no written defense or plea being filed: 60 Ga., 127-8. Two of three convicted under sufficient evidence: 64 Ga., 361.

2 Whart. Cr. Law, §2475; 2 Bish. *Ib.*, §1096; 2 Bish. Cr. Proc., §992; 3 Gr. Ev., §216; 2 Arch. Cr. Pr. and Pl., 1697. "Horning serenade" is: 35 Am. R., 210.

§4515. (4442.) (4401.) *Affrays.* An affray is the fighting of two or more persons in some public place, to the terror of the citizens and disturbance of the public tranquility. Persons so offending shall be indicted, and, on conviction, shall be punished [as prescribed in section 4310 of this Code]; (a.) and it shall be considered a great aggravation of this offense if any contempt or disobedience of the magistrate, or other peace officer commanding the peace, shall be proved.

Two indicted, both must be convicted or neither; words alone will not constitute, but words with acts will; one aiding, assisting and abetting guilty as principal: 13 Ga., 322.

2 Whart. Cr. Law, §2494; 2 Bishop *Ib.*, §32-37; 2 Bish. Cr. Proc., §16; 2 Arch. Cr. Pr. and Pl., 1709; 30 Am. R., 86.

§4516. (4443.) (4402.) *Dueling.* If any person shall deliberately challenge, by word or writing, the person of another, to fight with sword, pistol, or other deadly weapon, or if any person so challenged shall accept the said challenge, in either case, such person so giving, or sending, or accepting any such challenge, shall, on conviction, be punished by a fine not less than five hundred dollars, and be imprisoned in the common jail of the county for any time not exceeding six months. Or, if the jury should so recommend, such person shall, in addition to the fine herein imposed, be punished by imprisonment and labor in

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and considered the author himself, and be indicted and punished as such; and may, moreover, be punished for a contempt of the Court, as any other witness refusing to testify.

§4523. (4450.) (4409.) *The truth is evidence.* In all cases of indictment for a libel, or for slander, the person prosecuted shall be allowed to give the truth in evidence. §2979.

§4524. (4451.) (4410.) *Forcible entry.* Forcible entry is the violently taking possession of lands and tenements with menaces, force and arms, and without authority of law. §4085 et seq.

The prosecutor dispossessed, or from whom possession detained, a competent witness: 24 Ga., 191. The force must be private, not public, and when the entry under legal process by landlord was not within the terms of this section: 61 Ga., 496.

2 Whart. Cr. Law, §2013; 2 Bish. *Id.*, §463; 2 Arch. Cr. Pr. and Pl., 1128.

§4525. (4452.) (4411.) *Forcible detainer.* Forcible detainer is the violently keeping possession of lands and tenements with menaces, force and arms, and without authority of law. §4085 et seq.

Section cited: 43 Ga., 433.

§4526. (4453.) (4412.) *Punishment for forcible entry or detainer.* Any person who shall be guilty of a forcible entry, or a forcible detainer, or both, may be indicted, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the Court; and the Court before whom the conviction takes place shall cause restitution of possession of the premises to be made to the party aggrieved: *Provided, always*, that if the party forcibly detaining lands and tenements, or those under whom he claims, shall have been in peaceable possession of the same for the space of three years or more, immediately preceding the filing of the complaint, such person or party shall not be subject to the penalties of this section, nor shall restitution of possession be made: *and provided, also*, that the only questions to be submitted to and determined by the jury in trials for forcibly entry, or forcible detainer, shall be the possession and the force, without regard to the merits of the title on either side.

§4527. (4454.) (4413.) *Carrying concealed weapons.* Any person having or carrying about his person, unless in an open manner and fully exposed to view, any pistol ~~(except horseman's pistol)~~, dirk, sword in a cane, spear, bowie knife, or any other kind of knives manufactured and sold for the purpose of offense and defense, shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in section 4310 of this Code. Act of 1837, *Amend.* C. p. 848. *FL-3, 48* Acts of 1851 -2, p. 269. (a) Acts of 1865 6, p. 233.

Constitutionality of the Act of 1837: 1 Ga., 243 251. Act of 1851-2 did not repeal section 4570: 12 Ga., 1. If weapons carried so that others could see and know it was a pistol or weapon, it was no violation of the Act of 1851-2, although some part of it concealed from view: 32 Ga., 225. Otherwise if so far concealed, although partially exposed to view, so that it could not be readily seen and recognized as a pistol: 32 Ga., 292. Carrying concealed weapons is not always in law evidence of malice: 33 Ga., 303. When cannot prove defendant's custom to carry weapons exposed to view, on a charge of having concealed weapons at a certain time and place: 36 Ga., 242. As to the strict enforcement of this part of the criminal law: 31 Ga., 420-421. Army repeaters and horseman's pistols on the same footing, but not when carried concealed: 44 Ga., 221-2. When no evidence of motive in putting pistol in defendant's pocket: 46 Ga., 294. The Court should not express an opinion on the facts; counsel can present their view of the law and the facts to the jury: 10 Ga., 213; 56/503. Sufficient evidence to sustain the verdict of guilty: 52 Ga., 40. Continuance, evidence: 61 Ga., 481. When mainspring of the weapon disabled so as to prevent its discharge, was no excuse: 61 Ga., 417. Where no legal jeopardy, and newly discovered evidence not a ground for new trial: 60 Ga., 601.

2 Bish. Cr. Law, §120; 2 Whart. *Id.*, §2496; 25 Am. R., 561-3, n. Pistols, one unloaded and one without tube, not weapons: 36 Am. R., 15.

§4528. *Deadly weapons not to be carried to public places.* No person in this State is permitted or allowed to carry about his or her person, any dirk, bowie knife, pistol or revolver, or any kind of deadly weapon to any Court of justice, or any election ground or precinct, or any place of (a) Acts of 1870, p. 421. Acts of 1878 -9, p. 64.

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public worship, or any other public gathering in this State, except militia muster-grounds; and if any person or persons shall violate any portion of this section, he, she or they shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty nor more than fifty dollars for each and every such offense, or imprisonment in the common jail of the county not less than ten nor more than twenty days, or both, at the discretion of the Court: *Provided*, that this section shall not apply to any Sheriff, deputy Sheriff, coroner, constable, marshal, policeman, or other arresting officer or officers in this State or their posses, acting in the discharge of their official duties.

Indictment sufficient, and this law not unconstitutional: 53 Ga., 472. What is a deadly weapon: 30 Ga., 138; 41/155; 15/223.

§4528. (a.) *Pointing weapon at another.* Any person who shall intentionally point or aim a gun or pistol, whether loaded or unloaded, at another, not in a sham battle by the military, and not in self-defense, or in defense of habitation, property or person, or other instances standing upon like footing of reason and justice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as prescribed in section 4310 of this Code.

§4529. (4455.) (4414.) *Other offenses against public peace.* All other offenses against the public peace, not provided for in this Code, shall be prosecuted and indicted as heretofore, and the punishment in every such case, shall be [as prescribed in section 4310 of this Code.] (a.)

(a) Acts of
1865-6, p.
233.

Section cited: 53 Ga., 127.

Pointing ears as shooting at; a misdemeanor.
192-108.